

¹ 5 U.S.C. § 8101 *et seq.*

because of an underwithholding of optional life insurance (OLI) premiums; and (3) whether OWCP properly denied waiver of recovery of the overpayments.

FACTUAL HISTORY

On May 8, 2000 appellant, then a 46-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she experienced right upper arm muscle pain when she lifted a full flat tray while in the performance of duty. She stopped work on that date. On June 2, 2000 OWCP accepted the claim for right arm strain. It subsequently expanded the acceptance of appellant's claim to include resolved right shoulder impingement.² Appellant underwent OWCP-authorized arthroscopic right shoulder surgeries on January 18 and August 23, 2001. OWCP paid her wage-loss compensation on the daily rolls as of January 6, 2001, and on the periodic rolls as of February 25, 2001. Appellant filed additional CA-7 forms claiming disability from work and OWCP paid her wage-loss compensation on the supplemental rolls as of September 10, 2009 and on the periodic rolls as of September 27, 2009.

On April 30, 2019 the Office of Personnel Management (OPM) informed OWCP that as a compensationner appellant was eligible to continue Federal Employees' Group Life Insurance (FEGLI) coverage in the form of basic life insurance (BLI), OLI, and PRBLI coverage. The final base salary on which FEGLI was based was \$51,440.00. OPM requested that OWCP deduct life insurance premiums for BLI no reduction, OLI, option B-1X no reduction, and option C-1X full reduction. It also informed OWCP that deductions for appellant's PRBLI should have commenced on March 13, 2010; however, it appeared no reductions were made for appellant's PRBLI coverage. Additionally, OPM noted that there was no response to its "freeze letters" of August 2018, but appellant originally had option B no reduction and cancelled option C on an April 2010 Continuation of Life Insurance Coverage as an Annuitant or Compensationner under FEGLI Program (SF-2818) and thus, she had option C due to incontestability. Appellant's April 18, 2010 SF-2818 and OPM's Option C Election Forms (freeze letters) dated April 29, 2019 were submitted. The SF-2818 form bearing appellant's signature verified OPM's April 30, 2019 summary of appellant's life insurance elections as an annuitant or compensationner. The form indicated that appellant's initial elections were made on April 18, 2010 and that on April 29, 2019 she changed her OLI election to discontinue option C.

By letter dated June 14, 2019, OWCP informed OPM that it began deducting premiums for OLI post 65 and PRBLI no reduction from appellant's continuing compensation payments on May 26, 2019. It noted that it had stopped all deductions for OLI option C when appellant turned 65 years old. OWCP indicated that the last deduction for OLI made prior to May 26, 2019 was December 8, 2018. It requested OPM to verify whether it should retroactively reinstate OLI premiums to December 9, 2018. OWCP also requested OPM to verify whether it should make deductions for PRBLI with no reduction beginning March 13, 2010. It requested clarification because there were no prior SF-2818 forms in the record and on the April 18, 2010 SF-2818 appellant checked a box marked "Yes," and a box marked "No," in response to question 13

² OWCP granted appellant a schedule award for the period from September 5, 2007 until July 6, 2008 for 14 percent permanent impairment of the right upper extremity.

regarding whether she wished to elect family OLI option C.³ OWCP noted that her elections must be clearly established before it could declare an overpayment for retroactive deductions.

On August 6, 2019 OWCP deducted premiums for OLI and PRBLI no reduction from appellant's continuing compensation payment for the period July 21 to August 17, 2019 based on incontestability (code I1) as instructed by OPM. Appellant's final base salary on which FEGLI was based was \$51,440.00.

In a preliminary overpayment determination dated August 13, 2019, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$13,389.20 because BLI, OLI, and PRBLI premiums had not been properly deducted from her FECA compensation for the period March 13, 2010 through July 20, 2019 and because it under deducted her life insurance premiums which should have been based on the annual salary of \$51,440.00 rather than \$50,876.80. It provided overpayment calculations, which revealed that the overpayment occurred from March 13, 2010 through July 20, 2019 and included BLI, OLI, and PRBLI overpayment calculations to reach the \$13,389.20 total overpayment. OWCP further advised appellant of its preliminary determination that she was without fault in the creation of the overpayment and requested that she complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20), and submit documentation including tax returns, bank account statements, bills and cancelled checks, pay slips, and other records which supported income and expenses listed. Additionally, it advised her that, within 30 days of the date of the letter, she could request a final decision based on the written evidence or a prerecoupment hearing.

On September 6, 2019 appellant requested a prerecoupment hearing by telephone. She requested waiver of recovery of the overpayment, contending that she was unaware that life insurance premiums were not paid. In a September 4, 2019 Form OWCP-20, appellant reported monthly income of \$3,633.00 and listed monthly expenses of \$2,955.00.⁴ She indicated that she had assets of \$300.00.

Following a telephonic hearing held on January 9, 2020, an OWCP hearing representative, by decision dated March 24, 2020, vacated the August 13, 2019 preliminary overpayment determination and remanded the case for further development. The hearing representative found that OWCP had issued its preliminary overpayment determination without receiving OPM's response to the June 14, 2019 letter as to whether OWCP had to retroactively reinstate premiums for OLI to December 9, 2018 due to incontestability. The hearing representative also noted a number of inconsistencies between the calculation of premiums which should have been deducted for BLI, OLI, and PRBLI in OWCP's preliminary overpayment determination and in the manual adjustment form dated August 7, 2019. Further, the hearing representative noted that OWCP appeared to offset a prior underpayment of compensation, from the overpayment, which was

³ The Board notes that it appears that OWCP inadvertently indicated that appellant's responses were for question 3 rather than question 13 which relates to the election of family OLI option C while question 3 relates to the provision of a Social Security number.

⁴ The Board notes that it appears that appellant inadvertently calculated \$2,953.00 rather than \$2,955.00 in total monthly expenses.

prohibited. The hearing representative noted that OWCP indicated that the overpayment due to failure to deduct PRBLI premiums existed from March 13, 2010 through July 20, 2019, OWCP did begin deduction of PRBLI no reduction premiums on May 26, 2019. Finally, the hearing representative instructed OWCP that it should address any/all discrepancies and clearly explain how the overpayment was calculated in a new preliminary overpayment determination.

OWCP, in a preliminary overpayment determination dated July 22, 2020, notified appellant that she had received an overpayment of compensation in the amount of \$12,840.49 because it had failed to properly deduct premiums for PRBLI with no reduction from her FECA compensation payments for the period March 13, 2010 through May 25, 2019 based on OPM's April 30, 2019 letter. It provided its calculations on the amount of compensation paid during the period. OWCP further notified appellant of its preliminary determination finding that she without fault in the creation of the overpayment. It provided her with an overpayment action request form and a Form OWCP-20 for her completion. OWCP again requested that appellant provide documentation including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records which supported income and expenses listed, and allotted 30 days for her to respond.

In a separate preliminary overpayment determination also dated July 22, 2020, OWCP informed appellant that she was overpaid in the amount of \$678.06 because it had failed to properly deduct OLI premiums from her FECA compensation payments for the period March 13, 2010 through July 20, 2019. It found that it had under deducted her OLI premiums based on the annual salary of \$50,876.80 rather than \$51,440.00 for the period March 13, 2010 through November 11, 2018. Additionally, OWCP noted that deductions for OLI premiums ceased effective November 11, 2018 and were not reinstated until July 21, 2019. It explained its calculation of the overpayment during the period March 13, 2010 through July 21, 2019. OWCP further informed appellant of its preliminary determination that she was without fault in creation of the overpayment. It provided her with an overpayment action request form and a Form OWCP-20 for her completion and requested that she submit supporting financial documentation. Additionally, OWCP continued to inform appellant of the actions she could take, and allotted 30 days for her to respond. No response was received to either preliminary overpayment determination.

In decisions issued on December 23, 2020, OWCP finalized both preliminary overpayment determinations dated July 22, 2020. It found that appellant had received an overpayment of compensation in the amount of \$12,840.40 because no deductions for PRBLI premiums were made from her FECA compensation payments for the period March 13, 2010 through May 25, 2019. OWCP also found that she had received a \$678.06 overpayment of compensation for the period March 13, 2010 through July 20, 2019 because it had failed to properly deduct OLI premiums from her FECA compensation payments. It further found that appellant was without fault in the creation of the overpayments, but denied waiver of recovery of the overpayments, noting that she had not responded to its July 22, 2020 preliminary overpayment determinations. OWCP required recovery of the overpayments in full.

LEGAL PRECEDENT -- ISSUES 1 & 2

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.⁵ When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.⁶

Under the FEGLI Program, most civilian employees of the Federal Government are eligible to participate in BLI and one or more of the options.⁷ The coverage for BLI is effective unless waived,⁸ and premiums for basic and optional life coverage are withheld from the employee's pay.⁹ Upon retirement or upon separation from the employing establishment or being placed on the FECA periodic compensation rolls, an employee may choose to continue BLI and OLI coverage in which case the schedule of deductions made will be used to withhold premiums from his or her annuity or compensation payments.¹⁰ BLI coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;¹¹ however, the employee is responsible for payment of premiums for OLI coverage which is accomplished by authorizing withholdings from his or her compensation.¹²

A 1980 amendment of 5 U.S.C. § 8706(b)(2) provided that an employee receiving compensation under FECA could elect continuous withholdings from his or her compensation, so that his or her life insurance coverage could be continued without reduction. 5 C.F.R. § 870.701 (December 5, 1980) provided that an eligible employee had the option of choosing no life insurance; Option A -- basic coverage (at no additional cost) subject to continuous withholdings from compensation payments that would be reduced by two percent a month after age 65 with a maximum reduction of 75 percent; Option B -- basic coverage (at an additional premium) subject to continuous withholdings from compensation payments that would be reduced by one percent a month after age 65 with a maximum reduction of 50 percent; or Option C -- basic coverage subject to continuous withholdings from compensation payments with no reductions after age 65 (at a

⁵ *Id.* at § 8102(a).

⁶ *Id.* at § 8129(a).

⁷ 5 U.S.C. § 8702(a).

⁸ *Id.* at § 8702(b).

⁹ *Id.* at § 8707.

¹⁰ *Id.* at § 8706.

¹¹ *Id.* at § 8707(b)(2).

¹² *Id.* at § 8706(b)(3)(B). *See B.B.*, Docket No. 17-1733 (issued March 26, 2018).

greater premium).¹³ When an underwithholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM upon discovery of the error.¹⁴

ANALYSIS -- ISSUES 1 & 2

The Board finds that appellant received an overpayment of compensation in the amount of \$12,840.49 for the period March 13, 2010 through May 25, 2019, for which she was without fault, because of an underwithholding of PRBLI premiums.

OPM notified OWCP of appellant's BLI, OLI, and PRBLI coverage, for which it should have deducted premiums effective March 13, 2010. OWCP, however, did not deduct the proper amounts of premiums for PRBLI from appellant's wage-loss compensation benefits for the period March 13, 2010 through May 25, 2019.

Following the hearing representative's March 24, 2020 remand of the case, OWCP calculated the amount of the resulting overpayment as \$12,840.49 for the period March 13, 2010 through May 25, 2019. In the preliminary overpayment determination dated July 22, 2020, it explained the monthly rates for PRBLI deductions that should have been made from March 13, 2010 through May 25, 2019 and found that the total amount of the overpayment based on failure to deduct premiums totaled \$12,840.49. While in compensation status, appellant remained responsible for all insurance benefits, including the premiums for PRBLI at whatever option he or she had selected.¹⁵ Moreover, as noted, when an underwithholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM upon discovery of the error.¹⁶ The Board thus finds that OWCP properly found that an overpayment exists and explained its calculation of the amount of the overpayment. As OWCP failed to properly deduct PRBLI premiums for the period March 13, 2010 through May 25, 2019, appellant received an overpayment of compensation of \$12,840.49 during this period.¹⁷

The Board also finds that the case is not in posture for decision as to whether appellant received an overpayment of compensation in the amount of \$678.06 for the period March 13, 2010 through July 20, 2019 due to underwithholding of OLI premiums. The hearing representative found that OWCP had issued its preliminary overpayment determination prematurely regarding this overpayment. The Board finds that while the SF-2818 form of record indicates that appellant cancelled her OLI option C insurance on April 29, 2019, the record suggests that the overpayment

¹³ See *I.J.*, Docket No. 19-1672 (issued March 10, 2020); *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

¹⁴ 5 U.S.C. § 8707(d); see also *J.H.*, Docket No. 20-0281 (issued May 18, 2021); *B.B.*, *supra* note 12.

¹⁵ 5 C.F.R. § 870.504(b); *S.P.*, Docket No. 17-1888 (issued July 18, 2018).

¹⁶ 5 U.S.C. § 8102.

¹⁷ See *I.J.*, *supra* note 13; *J.H.*, *supra* note 14; *D.H.*, Docket No. 19-0384 (issued August 12, 2019); *R.W.*, Docket No. 19-0451 (issued August 7, 2019).

was calculated through July 20, 2019. Therefore, it remains unclear whether the \$678.06 overpayment was calculated correctly for the period March 13, 2010 through July 20, 2019.

On remand, OWCP shall clarify remaining issues. It shall then determine the amount of the overpayment of compensation and issue a new preliminary overpayment determination, with an overpayment action request form, a new Form OWCP-20, and instructions for appellant to provide updated supporting documentation. Following this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁸

LEGAL PRECEDENT -- ISSUE 3

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹⁹

Recovery of an overpayment will defeat the purpose of FECA when such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.²⁰ Additionally, recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.²¹

OWCP's regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.²² Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.²³

¹⁸ See *S.H.*, Docket No. 20-1189 (issued January 27, 2021).

¹⁹ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; see *A.S.*, Docket No. 17-0606 (issued December 21, 2017).

²⁰ 20 C.F.R. § 10.436(a)(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(2) (September 2020).

²¹ *Id.* at § 10.437(a)(b).

²² *Id.* at § 10.438(a).

²³ *Id.* at § 10.438(b).

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly denied waiver of recovery of the \$12,840.49 PRBLI overpayment.

The fact that a claimant is without fault in the creation of an overpayment does not preclude OWCP from recovering the overpayment.²⁴ As OWCP found appellant without fault in the creation of the overpayments, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.²⁵ Appellant, however, has the responsibility to provide the appropriate financial information and documentation to OWCP.²⁶

In its preliminary overpayment determination dated July 22, 2020, OWCP explained the importance of providing the completed Form OWCP-20 and financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised appellant that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant, however, did not respond. As such, OWCP did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.²⁷

As appellant did not submit the information required under 20 C.F.R. § 10.438, which was necessary to determine her eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the \$12,840.49 PRBLI overpayment.²⁸

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$12,840.49 for the period March 13, 2010 through May 25, 2019, for which she was without fault, because of an underwithholding of PRBLI premiums. The Board further finds that the case is not in posture for decision as to whether appellant received an overpayment of compensation in the amount of \$678.06 for the period March 13, 2010 through July 20, 2019 due to an underwithholding of OLI premiums. The Board finds that OWCP properly denied waiver of

²⁴ See *George A. Rodriguez*, 57 ECAB 224 (2005); *Joyce O. Diaz*, 51 ECAB 124 (1999).

²⁵ 20 C.F.R. § 10.436.

²⁶ *Id.* at § 10.438; see also *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

²⁷ *J.H.*, *supra* note 14; *D.H.*, *supra* note 17.

²⁸ *Id.*

recovery of the \$12,840.49 PRBLI overpayment.²⁹ In light of the Board's disposition of the \$678.06 OLI overpayment, the issue of waiver is moot.

ORDER

IT IS HEREBY ORDERED THAT the December 23, 2020 decisions of the Office of Workers' Compensation Programs are affirmed in part, and set aside in part. This case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 12, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

²⁹ With respect to recovery of the overpayment, the Board's jurisdiction is limited to reviewing those cases where OWCP seeks recovery from continuing compensation benefits under FECA. *J.C.*, Docket No. 17-1791 (issued February 23, 2018); *D.R.*, 59 ECAB 148 (2007); *Miguel A. Muniz*, 54 ECAB 217 (2002). As appellant is not receiving wage-loss compensation, the Board does not have jurisdiction with respect to the recovery of the overpayment under the Debt Collection Act. *Id.*; *Miguel A. Muniz*, 54 ECAB 217 (2002); *Lorenzo Rodriguez*, 51 ECAB 295 (2000); 20 C.F.R. § 10.441.